IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3278 OF 1994

Bhaskar @ Bhausaheb Yeshwant Boraste and Anr. .. Petitioners.
Vs.
Babu Pandu Bhoi .. Respondent.

Mr.P.N.Joshi for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 30TH AUGUST, 2005

P.C.:

. The petitioners have impugned the order dated 4.8.1993 passed by the District Judge, Nashik below Exhibit-1 in Civil Miscellaneous Application No.2 of 1993. This application was filed for condonation of delay in preferring restoration application. The petitioners had filed the appeal bearing Regular Civil Appeal No.292/85 against the judgment and decree passed in favour of the respondent-landlord on 18.12.1982. The appeal was filed in time. The appeal was placed before the Court for hearing on 7.2.1992 and since none appeared for the petitioners it came to be dismissed for default by the learned District Judge. The petitioners came to know about dismissal of the appeal when he contacted his advocate on 11.5.1992 to find out the progress of

the appeal. Immediately he applied for certified copy which was delivered to him on 4.12.1992 and thereafter he filed an application for restoration of the appeal. Since there was delay in filing application for restoration, application Exhibit-1 was filed seeking condonation of delay of about ten months in preferring restoration application. The learned Judge rejected the application on the ground that the applicant did not file an affidavit of his advocate in support of his contentions that his advocate did not intimate him the date of hearing and, therefore, he could not remain present in the court. The learned Judge ought not to have insisted for filing of such affidavit. It is well settled that it is the duty of the lawyer to attend the proceedings particularly when it is an appeal for which attendance of the client may not be necessary. The advocate engaged for conducting an appeal on behalf of his client is expected to keep himself fully informed of the proceedings in the Court and be present when his case is called out. The litigant cannot be said to have any responsibility, legal or otherwise, after having engaged the services of an advocate and Vakalatnama is filed in his behalf, to attend the Court on every date unless his presence becomes indispensible. The advocate in the present case

was expected to attend the proceedings in the appeal and for lapse, if any, on his part, the appellant cannot be made to suffer. It is clear from the facts, as disclosed in the record, that the petitioners took prompt steps in filing the application after he came to know about the dismissal of the appeal in default. In my opinion, the petitioners have shown sufficient cause to condone the delay. Rule is, therefore, made absolute. The delay in filing the appeal stands condoned. The appellate court shall hear the application for restoration within four weeks from the date of receipt of this order and in the event of restoration of the appeal, shall proceed to dispose of the appeal within six months therefrom. The petition is, accordingly, disposed of.

(D.B.Bhosale, J.)